

REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA

THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
COMPLIED WITH ITS PROCEDURES AND REQUIREMENTS IN
AWARDING ITS CONTRACT FOR EXPRESS BUS SERVICES

REPORT BY THE
OFFICE OF THE AUDITOR GENERAL

P-777.2

THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
COMPLIED WITH ITS PROCEDURES AND REQUIREMENTS IN
AWARDING ITS CONTRACT FOR EXPRESS BUS SERVICES

MAY 1989



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Kurt R. Sjoberg
Acting Auditor General

May 17, 1989

P-777.2

Honorable Elihu M. Harris, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, Room 2148
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report showing that The San Francisco Bay Area Rapid Transit District complied with its procedures and requirements in evaluation proposals for express bus services and followed its procedures in resolving the protest to the award of the contract.

Respectfully submitted,

A handwritten signature in cursive script that reads "Kurt R. Sjoberg".

KURT R. SJOBERG
Acting Auditor General

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SUMMARY

RESULTS IN BRIEF

The San Francisco Bay Area Rapid Transit District (BART) complied with its procedures and requirements in evaluating proposals when it awarded its contract for express bus services. It also followed its procedures in resolving the protest to the award of the express bus contract.

BACKGROUND

BART was established in 1957 and started service in 1972. Operating trains on an interurban rail system with 71.5 miles of track, the system services the counties of Alameda and Contra Costa and the city and county of San Francisco. To supplement its rail service, BART has 11 express bus service lines, operating over 122,000 service hours per year. Express bus service is a BART-funded bus service linking outlying east bay communities to the BART rail system. Twelve cities, along four service corridors, receive express bus services.

The Alameda-Contra Costa Transit District (AC Transit) held the express bus contract from 1974 through January 1989. In 1987, BART decided to seek competitive bids for the express bus contract. In January 1988, BART issued a Request for Proposals (RFP) for express bus services and, in June 1988, awarded the contract to Laidlaw Transit, Incorporated (Laidlaw). AC Transit protested the award unsuccessfully in April 1988. Service under the new contract began January 15, 1989.

PRINCIPAL FINDING

**The San Francisco Bay Area Rapid Transit District
Complied With Its Procedures and Requirements in
Awarding Its Contract for Express Bus Services**

BART complied with its procedures and requirements in evaluating proposals for express bus services. In January 1988, BART issued an RFP for the provision of express bus services. The RFP contained detailed descriptions of the services the contractor would be required to provide, incentives and penalties to ensure reliable service, provisions for the submission of alternative proposals, evaluation criteria, provisions for protesting the contract award, and a description of the protest resolution process. For the 12 proposals BART received from six different organizations, BART followed its evaluation process and adhered to its evaluation criteria in its review of all 12 proposals. On June 3, 1988, BART awarded the contract to Laidlaw, the proposer with the highest score and the lowest bid.

AC Transit, then the incumbent contractor, protested the award of the contract to Laidlaw. BART followed its protest procedures and ultimately denied the AC Transit protest.

AGENCY COMMENTS

The San Francisco Bay Area Rapid Transit District reviewed our report and had no comments.

INTRODUCTION

The San Francisco Bay Area Rapid Transit District (BART) was formed in 1957 by the California Legislature to ensure "necessary rapid transit service" in the San Francisco Bay Area. BART, which began providing transportation services in September 1972, is primarily an interurban railway system connecting suburban communities with San Francisco and Oakland. Currently, BART operates trains over 71.5 miles of track in the counties of Alameda and Contra Costa and in the city and county of San Francisco. During the months of October through December 1988, the BART system carried an average of 205,000 passengers each weekday.

In addition to its rail system, BART has 11 express bus service lines, operating over 122,000 service hours per year. Express bus service is a BART-funded bus service linking outlying east bay communities to the BART rail system. The service is provided through a purchase-of-services contract, under which BART contracts with either a privately or a publicly owned company to provide bus services to and from BART stations. Twelve east bay cities, along four service corridors, receive express bus services extending as far as the cities of Hercules, Martinez, Brentwood, and Livermore.

The History of the Express Bus System

In 1974, BART's board of directors approved the initial express bus contract with the Alameda-Contra Costa Transit District (AC Transit). In 1984, the board of directors approved a renegotiated contract with AC Transit. In BART's effort to provide more dependable service, its new contract provided performance incentives and penalties and improved schedule coordination. BART compensated AC Transit for its services under this contract at a fixed rate-per-hour for each bus operated by AC Transit in express bus services. This fixed rate-per-hour is called the service-hour rate. Service hours are the elapsed hours from the first entry of a bus on a BART express route to the time the bus completes a BART express bus route. BART designated the applicable beginning and ending times for each bus and the number of service hours for each route. Payment for the completion of service hours was the full compensation for all AC Transit services provided under this contract. In fiscal year 1987-88, AC Transit's service-hour rate for each of its buses was \$65.55.

In October 1984, the federal Department of Transportation's Urban Mass Transportation Administration (UMTA) issued a policy designed to promote private-enterprise participation in mass transit projects. To meet the intent of this federal policy, BART studied a variety of options, one of which was to seek competitive bids from private firms for its contract to provide express bus services.

Furthermore, BART anticipated budget deficits, causing BART to reevaluate the express bus contract with a view towards reducing costs.

At the direction of BART's board of directors, on September 1, 1987, BART issued a Request for Proposals (RFP) seeking competitive bids for the operation of express bus services in its central and south corridors. These corridors account for approximately 45 percent of BART's express bus services. BART received six proposals, all of which met the requirements of the RFP. The proposals were from AC Transit and five private corporations. The general manager recommended that the board of directors award the contract to the private corporation with the lowest-cost proposal. The matter came before the full board of directors on November 5, 1987. At this meeting, concerns were expressed about the proposed award of the contract to this private corporation. Specifically, questions arose regarding handicap accessibility, short-term savings as compared to long-term satisfaction with the service, the effect on long-term transportation planning, and the impact on potentially displaced drivers. At the conclusion of the discussion, the board of directors voted to reject all bids.

At the direction of its board of directors, on January 6, 1988, BART released a second RFP for competitive bids for the provision of express bus services for all 11 express bus lines along the four express bus corridors. BART received proposals from AC Transit, four private corporations, and one joint venture corporation; from these, it awarded the contract for express bus services to Laidlaw Transit, Incorporated.

SCOPE AND METHODOLOGY

The purpose of our review was to evaluate BART's award of the contract for express bus services for compliance with applicable laws and procedures. We restricted our review to BART's actions in the issuance of the second express bus RFP, BART's evaluation of proposals, and BART's processing of protests. We did not evaluate BART's overall system for contracting or procurement. Further, we did not evaluate the preparation, assumptions, or accuracy of any of the proposers' proposals.

To evaluate BART's contracting process for express bus services and its RFP, we reviewed state contracting laws and contracting policies of the federal UMTA. We obtained an opinion from our legal counsel concerning the applicability of state contracting laws. Because the contract was for the purchase of services and because BART receives no federal operating subsidies, we concluded that neither the state Public Contract Code nor federal requirements applied. We, therefore, reviewed the RFP for compliance with BART's policies regarding competitive contracting.

After reviewing the applicable evaluation requirements in the RFP and interviewing BART staff to document the evaluation process, we reviewed each of the proposals and the results of BART's review of the proposals. Because the individual evaluators' scoring sheets were not available for our review, we compared the summaries of how the

evaluators determined the acceptability of each proposal according to the RFP requirements. We did not attempt to evaluate the qualitative elements of the proposals.

To document the protest process, we reviewed the applicable protest requirements in the RFP and interviewed BART staff. We also examined the results of BART's review of the protest to the contract award to determine if BART followed its stated procedures. In addition, we documented the protests and results of the protests made to UMTA and the Metropolitan Transportation Commission, the local transportation planning agency. However, we did not determine whether BART or any other agency appropriately resolved these protests.

AUDIT RESULTS

THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT COMPLIED WITH ITS PROCEDURES AND REQUIREMENTS IN AWARDING ITS CONTRACT FOR EXPRESS BUS SERVICES

The San Francisco Bay Area Rapid Transit District (BART) complied with its procedures and requirements in evaluating proposals for express bus services. In January 1988, BART issued a Request for Proposals (RFP) for the provision of express bus services. BART's RFP contained detailed descriptions of the services the contractor would be required to provide, incentives and penalties to ensure reliable service, provisions for the submission of alternative proposals, evaluation criteria, provisions for protesting the contract award, and a description of the process for resolving protests. BART received 12 proposals from six different organizations, and in June 1988, awarded the contract for express bus services to Laidlaw Transit, Incorporated (Laidlaw), the proposer with the highest score and the lowest bid. The Alameda-Contra Costa Transit District (AC Transit), then the incumbent contractor, protested the award of the contract to Laidlaw. However, adhering to its protest procedures, BART denied the AC Transit protest, and Laidlaw began express bus services on January 15, 1989.

BART COMPLIED WITH ITS PROCEDURES AND REQUIREMENTS FOR EVALUATING PROPOSALS

We reviewed all 12 technical proposals submitted in response to BART's RFP for express bus services. We also reviewed the summaries of the proposal evaluations by BART's evaluation committee, and we examined the committee's documentation of its evaluation. We found that BART complied with its procedures and requirements for the evaluation of proposals.

On January 6, 1988, BART released the second RFP for express bus services for all 11 express bus lines along four express bus corridors. BART prepared an RFP that contained detailed descriptions of what services would be required of the contractor. For example, the RFP required that proposers' bids include their service-hour rate for operating 45 buses for 122,256 service hours annually. Proposers were required to specify in their technical proposals the names and experience of the proposed management team. The proposers also had to identify the make, model, seating capacity, width, and year of manufacture of the 45 vehicles to be used under this contract. The RFP encouraged proposers to submit proposals that included the use of 96-inch-wide buses and 102-inch-wide buses, which provide better access for handicapped passengers. In addition, the RFP required that proposers describe the proposed maintenance plan, show the proposed salaries for drivers and mechanics, describe the proposer's management approach to the contract, and provide references.

In addition to specific requirements, BART's RFP described specific performance incentives and penalties that BART would use to enforce performance requirements. For example, the RFP described the incentives and penalties it would use to enforce on-time performance, cleanliness of buses, and adequate operation of wheelchair lifts.

BART's RFP also required that the proposer submit detailed answers to 25 different questions, as part of its technical proposal, addressing all of the requirements contained in the RFP. Further, the RFP contained a description of the evaluation criteria for selecting a contractor. The RFP showed that points were to be awarded for 12 elements, including the use of Disadvantaged Business Enterprise subcontractors, the cost of the service, the proposed equipment maintenance program, and the resumes of proposed managers.¹

On February 26, 1988, BART received 12 proposals from six different organizations, including AC Transit, four private corporations, and one joint-venture corporation. The RFP required that all proposals be submitted to BART no later than 2:00 P.M., February 26, 1988. However, one organization, AC Transit, did not submit its proposal until 2:21 p.m. on the due date. The general

¹A Disadvantaged Business Enterprise is a small business concern that is at least 51 percent owned by one or more socially and economically disadvantaged individuals. Socially and economically disadvantaged individuals are presumed to include women, Black Americans, Hispanic Americans, Asian Americans, and Native Americans.

manager, with advice from BART's general counsel's office, recommended that BART accept the proposal because the express bus contract is not required to be competitively bid and there was no legal requirement that BART strictly adhere to the deadline imposed by competitive bidding law. The general counsel's office noted that the RFP contained a provision allowing BART to waive informalities and irregularities in the proposals. The decision was also based on the fact that none of the other proposals had been opened before the receipt of the AC Transit proposal. As a result, the general manager believed that AC Transit had not gained any competitive advantage by the late submittal.

Three of the 12 proposals did not meet the basic requirements of the RFP and were "nonresponsive." BART rejected one proposal as nonresponsive because the proposal did not contain the number of buses required in the RFP. BART rejected the other two because they proposed that BART lease the required buses from the organization while the RFP required that the proposer provide all of the vehicles for the contract. Nevertheless, all six organizations submitted at least one proposal that met the requirements of the RFP and was considered "responsive."

BART's Evaluation Process

To evaluate the technical proposals, BART established an evaluation committee under the direction of the former supervisor of bus operations. The evaluation committee was made up of four BART employees and one employee of the Central Contra Costa Transit Authority. According to the former supervisor of bus operations, after the receipt of the proposals on February 26, 1988, an initial review was completed to ensure that each proposal contained all the required documentation. Using an evaluation form based on the evaluation criteria in the RFP, each committee member reviewed all of the responsive proposals separately. After the committee members' first review, the committee met to discuss any problems with the proposals. After the discussion among the committee members, the former supervisor of bus operations telephoned the proposers to get clarifications of their proposals.

When all of the information was complete, the committee scored each proposal. Some elements of the proposals were awarded points; other elements were scored on a pass/fail basis. The committee members' determination of whether the element of the proposal passed or failed was based on whether the proposal complied with a specific RFP requirement. For example, committee members determined whether the proposal contained an appropriate maintenance plan, driver training program, and a statement that the proposer would comply with BART's policy prohibiting contracts with firms that do business with South

Africa. In addition, committee members awarded each proposal up to a total of 100 points. Points were awarded for the proposals' use of Disadvantaged Business Enterprises (up to 15 points), the service-hour rate (up to 60 points), the approach to system management (up to 10 points), and any additional areas in which the committee members judged the proposal to exceed RFP standards (up to 15 points). We reviewed the evaluation committee's documentation of its review of proposals and determined that it had followed its evaluation process. We validated only the mathematical accuracy of the evaluation committee's final scoring summary. The committee made two minor errors in the calculation of service-hour rate scores, but the errors did not affect the ranking of proposals.

The final ranking of proposals and the results of the evaluation were transmitted to BART's general manager, who prepared a recommendation for BART's board of directors. The board of directors made the final decision for the contract award.

The Results of the Proposal Evaluation

The results of BART's evaluation are shown in the following table. The number of points and the rankings are based on the results of the evaluation committee's review of the proposals. Also included in the table is the proposed hourly wage for bus drivers.

TABLE 1
RESULTS OF BART'S EVALUATION OF
PROPOSALS FOR EXPRESS BUS SERVICES
MARCH 22, 1988

Proposer	Evaluation Rankings	Point Total	Hourly Wage	Service-Hour Rate	Estimated Annualized Cost	Projected First-Year Savings (In Millions)	Projected Five-Year Savings (In Millions)
Responsive Proposals							
Laidlaw Transit, Inc. (102-inch bus proposal)	1	79.00	\$ 9.10	\$51.72	\$6,323,080	\$1.69	\$8.45
ATE Management and Service Company, Inc. (96-inch bus proposal)	2	71.65	8.00	52.56	6,425,775	1.59	7.94
ATE Management and Service Company, Inc. (102-inch bus proposal)	3	70.65	8.00	52.94	6,472,233	1.54	7.71
Vancom, Inc. (102-inch bus proposal)	4	61.60 ^b	8.00	53.50	6,540,696	1.47	7.37
Alameda-Contra Costa Transit District (96- and 102-inch bus proposal)	5	59.00 ^b	11.01	54.15	6,620,162	1.39	6.97
DAVE Systems, Inc. (96-inch bus proposal)	6	56.00	7.37	55.95	6,840,223	1.17	5.87
DAVE Systems, Inc. (102-inch bus proposal)	7	55.00	7.37	56.16	6,865,897	1.15	5.74
Greyhound Lines, Inc. (96-inch bus proposal)	8	53.00	7.60	54.91	6,713,077	1.30	6.50
Greyhound Lines, Inc. (102-inch bus proposal)	9	51.00	7.60	55.39	6,771,760	1.24	6.21
Nonresponsive Proposals							
Greyhound Lines, Inc. (96-inch leased bus proposal)	NA	NA		53.27	6,512,577	1.50	7.51
Greyhound Lines, Inc. (102-inch leased bus proposal)	NA	NA		53.59	6,551,699	1.46	7.31
Vancom, Inc. (102-inch bus proposal, 42 buses)	NA	NA		52.15	6,375,650	1.64	8.19

Source: BART's Proposal Evaluation Documentation and General Manager's Recommendation to BART's Board of Directors, March 22, 1988.

^a These estimates are based on our calculations and differ from BART's calculations.

^b Corrected based on our calculations.

As Table 1 shows, Laidlaw scored the most points, 79 out of a possible 100, and proposed the lowest bid rate of \$51.72 per service hour. Laidlaw's bid was based on the use of union bus drivers. Table 1 also shows the proposed service-hour rates for each proposal. The estimated annualized cost was calculated by multiplying the proposer's service-hour rate by the annual total of 122,256 express bus service hours. To determine the projected first-year and five-year savings, we subtracted the annual and five-year costs for each proposer from AC Transit's annual and five-year cost, calculated using AC Transit's service-hour rate of \$65.55 for fiscal year 1987-88.

According to BART's general manager, Laidlaw had the best proposal for the following reasons: The evaluation staff stated that Laidlaw offered the best management plan. In addition, Laidlaw offered, in the staff's estimation, the best operational configuration because it proposed using three maintenance facilities. The staff reasoned that using three maintenance facilities, each near a corridor of express bus service, would allow for less "deadhead operating," which is when buses operate between routes and maintenance yards but are not generating revenue by carrying passengers. Three maintenance facilities would also allow for shorter response times when buses need to be replaced or added to routes. Laidlaw also proposed to use the same radio frequencies used by two adjoining transit services (also operated by Laidlaw), which would allow the opportunity for improving passenger transfers. Furthermore, Laidlaw proposed using buses that

have special protective safety walls included in the buses' sides to improve the overall safety of passengers.

On March 22, 1988, the general manager recommended to BART's board of directors' engineering and operations committee that Laidlaw be selected as the new contractor. The board of directors, on April 14, 1988, directed the general manager to issue a Notice of Award of the express bus contract to Laidlaw. On June 3, 1988, BART signed the new express bus contract and notified AC Transit that it was terminating the express bus contract with AC Transit effective January 15, 1989.

BART Followed Its Protest Procedures

The express bus RFP contained a provision for protesting the recommended award of the contract. A protestor was required to submit a "full and complete" written statement specifying in detail the grounds for the protest and the facts supporting the protest. The protest must have been filed within seven calendar days from the receipt of the Notice of Award. On April 25, 1988, the day before the last day of the protest period, AC Transit protested the award of the contract for express bus services to Laidlaw. We determined that BART followed the process it had outlined in the RFP to resolve this protest.

AC Transit's protest contained ten points that can be summarized in three general areas. The first area of protest was AC Transit's contention that the bid requirements of the RFP and the subsequent evaluation imposed an unfair advantage to the private companies. The RFP contained a provision requiring proposers who have received federal operating funds to certify that the proposer has fully allocated and included all relevant cost components in the proposed service-hour rate in accordance with Urban Mass Transportation Administration (UMTA) requirements. Private proposers did not have to submit the same types of cost breakdowns as proposers who received federal operating funds, but they did have to submit other cost information.

The second area of protest entailed AC Transit's contention that BART did not follow its own RFP procedures in scoring proposals. In its protest document, AC Transit contended that it had proposed services that it felt should have received more points during the evaluation.

The final area of protest is AC Transit's allegation that BART did not appropriately consider the regional effects of its award to Laidlaw. AC Transit contended, in part, that, even though BART would save money by awarding the contract to Laidlaw, this award would cost public transit in the region more money than would be saved by BART because AC Transit's revenue would decrease, but its share of costs, of which some are fixed, would not decrease the same amount. As a result, AC Transit alleged that the "region" would have a negative cash flow.

To ensure that BART had followed its own evaluation procedures and to resolve the protest, BART established a quality control committee of employees who had not been involved with the evaluation. In its analysis of the protest, the committee found no errors or omissions in BART's evaluation of proposals. For example, BART staff noted that the RFP required detailed cost information from all proposers. BART also evaluated the charge that it was adversely affecting regional transit in its award of the contract to Laidlaw. The conclusion was that there would be no regional negative effects. On May 27, 1988, the general manager recommended to the board of directors that BART deny the protest. On June 2, 1988, the board tabled the protest and, in effect, let the general manager's recommendation stand.

Subsequent AC Transit Protests

On June 9, 1988, AC Transit protested to the federal UMTA BART's award of the express bus contract to Laidlaw. UMTA refused to consider the protest because it determined that it had no jurisdiction in the matter. AC Transit also protested the award of the express bus contract to the Metropolitan Transportation Commission, the local transportation planning agency. However, this agency denied the protest.

In May 1988, the union representing employees from AC Transit filed a claim against BART. In the claim, the union contended that approximately 130 AC Transit employees would be terminated, furloughed, or laid off as a result of the award of the express bus contract to Laidlaw. Section 13(c) of the Urban Mass Transportation Act of 1964 provides protective arrangements for transit employees who are adversely affected as a result of federally funded changes in contracts. According to a BART attorney, BART denied the union's claim on July 14, 1988, and the union has not exercised its option to request a hearing on its claim. AC Transit has not terminated, furloughed, or laid off any employees due to its losing the express bus contract with BART. Laidlaw began operations under the new contract on January 15, 1989.

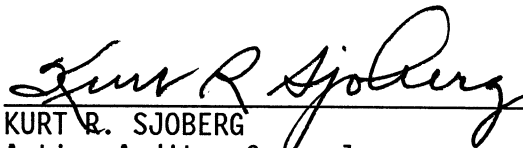
CONCLUSION

The San Francisco Bay Area Rapid Transit District (BART) complied with its procedures and requirements for the evaluation of proposals when it awarded its contract for express bus services. BART's RFP contained detailed descriptions of the services the contractor would be required to provide, incentives and penalties to ensure reliable service, provisions for the submission of alternative proposals, evaluation criteria, a process for protesting the contract award, and a description of how a protest would be resolved. BART followed its evaluation process and adhered to

its evaluation criteria in its review of proposals, awarding the contract to Laidlaw Transit, Incorporated, the proposer with the highest score and the lowest bid. The Alameda-Contra Costa Transit District, then the incumbent contractor, protested the award of the contract to Laidlaw. BART followed its protest procedures in denying the AC Transit protest. Laidlaw began express bus services on January 15, 1989.

We conducted this review under the authority vested in the auditor general by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,


KURT R. SJOBERG
Acting Auditor General

Date: May 15, 1989

Staff: Samuel D. Cochran, Audit Manager
Clifton John Curry



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May 10, 1989

ARLO HALE SMITH
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Re: Draft Report -
"San Francisco Bay Area Rapid Transit District
Complied with its Procedures and Requirements in
Awarding its Contract for Express Bus Services"

Dear Mr. Sjoberg:

Thank you for the opportunity to review the draft report. I have discussed the District's comments with your staff and have no comments on the revised draft.

Very truly yours,

A handwritten signature in cursive script that reads "Sherwood Wakeman".

Sherwood Wakeman
Acting General Manager

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
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